SUPERIOR COURT IN THE STATE OF CALIFORNIA
COUNTY OF YOLO

PEOPLE OF THE STATE OF CALIFORNIA
Plaintiff,

Case CR-F -08-0003355

vs.

MINUTE ORDER

MARCO ANTONIO TOPETE
Defendant.

Judge:	PAUL K. RICHARDSON
Clerk:	MELECIA RAMOS
Reporter:	JEANETTE BAKER
Date:	NOVEMBER 25, 2009

HEARING: Issue of restraints during pretrial proceedings, motion for pre-trial discovery compliance order, issue regarding access of experts to defendant housed at the Sacramento County Jail, proposed jury questionnaire

Counsel for the People: JEFF REISIG, District Attorney
GARRETT HAMILTON, Deputy District Attorney

Counsel for Defendant(s): HAYES GABLE
THOMAS PURTELL

8:40 AM

Defendant and counsel present in open court.

Court inquired of counsel if they had any comment regarding corrections in the transcript from the last proceeding. Attorney Gable advised he noted no errors in the transcript. Counsel for the People advised they had not reviewed the transcript.

The Court noted the motion and prepared order regarding People's motion to compel defendant to provide a handwriting exemplar which was granted last hearing. Counsel for the People advised they would be trying to find out the logistics with defense counsel. Defense counsel requested they be notified and be present during the handwriting exemplar; counsel for the People had no objection.

Per request of Attorney Purtell, Court ordered transcripts of court proceedings be provided from now on to each defense counsel.

Counsel stated they were prepared to proceed on the hearing regarding the issue of restraints during pretrial proceedings.

Lt. CARTER VAUGHN called by counsel for the People, sworn and testified.

People rest.

Defense rests.

After arguments and evidence presented, Court denied request that defendant be unrestrained during pre-trial proceedings. Court found there was enough evidence by Lt. Vaughn concerning security. Court further ruled that jail clothing would be appropriate. Defense counsel would be allowed to raise the issue at a later date if the Court should grant a motion to allow electronic media.

Notice of motion and motion for pre-trial discovery compliance with memorandum of points and authorities received from defense counsel on October 27, 2009 was ordered filed in open court this date.

The Court addressed defense counsel's motions for pre-trial discovery compliance.

Arguments presented.

Defense discovery request #1 (1st portion): defense motion that all notes and memoranda, handwritten or typed and all reports by law enforcement officers which contain information relevant to any crime charged against the defendant be provided was granted per PC 1054.1(f) to the extent of statements of witnesses the prosecution intends to call, the defendant or observations of the writers of the notes. (2nd portion): defense motion that the Prosecution notify all law enforcement officers involved in the investigation of this case to preserve any original notes was granted to the extent that the materials contain exculpatory information.

Defense discovery request #2: defense motion that the names and addresses of all percipient Prosecution witnesses to the alleged offense(s) be provided was granted to the extent that the People's intent is to call the witnesses at trial.

Defense discovery request #3: The Court reserved judgment regarding defense motion that all information orally related to law enforcement persons by potential witnesses concerning the prosecution of the pending charges be provided.

Defense discovery request #4: defense motioned to obtain records of any arrests or convictions of witnesses which may indicate moral turpitude and which might be used for impeachment purposes. Court granted disclosure of felony convictions of any material witness whose credibility is likely to be critical to the outcome of the trial per PC 1054.1(d). Court also granted disclosure of any pending charges against a witness. Court denied disclosure of RAP sheets.

Defense discovery request #5: defense motion regarding notification of the existence of any

informant used in connection with the investigation of the matter was denied without prejudice. Prosecution conceded it is not relying on any such informants. Prosecution also indicated its expert will rely on other sources of information for which the gang expert is claiming a privilege.

Court also noted that per EC 1042 defense has filed no such motion or hearing per EC 1042(d). Court directed defense counsel to file additional authority regarding this motion.

The Court found defense discovery request #6 to be moot since it has been previously resolved in defense request #4.

Defense discovery request #7: defense motion regarding reports and information concerning informant's information supplied to law enforcement was deferred; The Court directed counsel to provide additional authority as in defense request #5. Court advised that the Prosecution would have time to respond.

Defense discovery request #8: defense motion regarding all case summaries prepared by law enforcement officials be provided was denied as defense has cited no authority showing he has a right to obtain these summaries. The Court granted the request only to the extent these statements incorporate witnesses not otherwise disclosed per PC 1054.1(f).

Defense discovery request #9: defense motioned they be notified of the destruction of any notes of any law enforcement officer relating to a statement taken from the defendant concerning this case. Court denied motion without prejudice as defendant has cited no authority requiring this disclosure. Court requested authority from defense.

Defense discovery request #10: defense motion that all document, reports and photographs which the gang officer has been relying on be provided. It is the view of the Court that the request is too broad. Motion was denied without prejudice except as required by PC 1054.1(f).

Defense discovery request #11: defense motion that all Woodland Police Department and Yolo County Sheriff's Department rules and regulations regarding gang affiliations be provided. Counsel for the People advised that there was no validation of defendant being a gang member by the Yolo County Sheriff's Department and the criteria for the Woodland Police Department has been provided. Court denied as moot to the extent that the People have complied with the materials requested. These materials are not within PC 1054.1 and do not on their face appear exculpatory.

Defense discovery request #12: defense motion that all rules and regulations relating to the process and standards utilized by its officers in deciding an individual as identified as a gang member be provided was denied as moot (same as discovery request #11).

The Court advised that he has read and is prepared to render decisions regarding the proposed jury questionnaire; discussion regarding the proposed jury instructions to be heard after the recess.

9:55 AM

Court adjourned for a morning recess.

10:20 AM

Defendant and counsel present in open court.

The Court acknowledged a copy of the modified jury questionnaire that counsel have gone over, as well as the individual proposed jury questionnaire previously submitted by both counsel.

Counsel for the People advised they do not have the current modified copy and requested to make arrangements to obtain one. Counsel for the defendant stated they have an extra copy of the current proposed jury questionnaire they could provide.

The Court inquired of defense counsel if the issue regarding access of experts to defendant housed at the Sacramento County Jail had been resolved.

Attorney Gable advised he sent an email on 11/23/09 to Captain Maness which requested a response by 11/24/09 regarding accommodations needing to be made for the administration of tests on defendant. Attorney Gable advised that as of today, a response is yet to be received.

Attorney Gable suggested that if Sacramento County Jail could not accommodate, perhaps the testing could be done at the Yolo County Jail.

Counsel for the People advised they could try to run interference with Sacramento County Jail to facilitate the testing of the defendant by the defense expert.

The Court directed Attorney Gable to ask the People for their help if necessary regarding this issue.

Counsel for the People agreed that there would be a joint request that arrangements could be made at the Yolo County Sheriff's Dept. if Sacramento County does not comply with the accommodation for defendant to be tested; an order would be submitted for the Court's approval.

Counsel for the People advised he has reviewed the copy of the jury questionnaire provided to him by defense counsel and is prepared to proceed.

Proposed jury questionnaire addressed.

The Court reviewed with counsel the proposed jury questionnaire which was offered after counsel had met and conferred. Counsel stated for the record their objections. The Court indicated its preferences and ordered the indicated changes.

Attorney Gable stated the portion regarding the witness list is pre-mature at this time; the witness list is a work in progress and would be supplemented.

The Court directed parties to meet and confer and provide a formal jury questionnaire and advise the court if there should be any objections or disagreements.

The Court inquired of counsel if they had conferred regarding scheduling future court appearances; counsel advised they have not discussed specific scheduling. The Court directed counsel to meet and discuss future court dates and proposed schedule leading up to the trial date.

The Court scheduled its next hearing for Friday January 15, 2010 at 1:30 PM for Status Review, Further Scheduling and Discovery Issues.

The Court reminded Attorney Gable to file further authority regarding discovery motions not ruled upon today.

The Court ordered any discovery issues that are outstanding be filed by the defense no later than 5 PM on 12/18/09 with the People's response by 5 PM on 1/8/10.

Counsel for the People advised they would be providing the Court with a pre-signed stipulation and order for the transfer of the illegal weapon from the Prosecution to the defense so that the defense expert can examine and test it.

The defendant remained in custody with bail set at NO BAIL.

11:20 AM

Court adjourned.

frmlmins.s (FMO)